

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
Honolulu, Hawaii**

**July 14, 2006**

**180-Day Exp. Date: October 28, 2006**

**Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii**

**REGARDING:** Conservation District Use Application (CDUA) HA-3298  
for After the Fact Subdivision & Consolidation of  
Conservation District Land for Right of Way Public  
Highway Expansion and Highway Improvements

**APPLICANT:** State of Hawaii-Department of Transportation  
c/o Wesley R. Segawa & Associates, Inc.

**LANDOWNER:** State of Hawaii-Department of Transportation  
Highways Division

**LOCATION:** Land Adjacent & Makai of Queen Ka'ahumanu Highway  
Keahuolu, North Kona , Island of Hawaii

**TMK:** (3) 7-4-008:002

**AREA OF PARCEL:** ≈ 218.5 Acres

**AREA OF USE:** ≈ 7.2 Acres

**SUBZONE:** General

**BACKGROUND:**

The Right-of-Way (ROW) of Phase 1 of the Queen Ka'ahumanu Highway Widening Project, from Henry Street to Kealakehe Parkway was established in 1963 and exists within the Conservation District (**Exhibit 1**). The State Department of Transportation (DOT) has jurisdiction over established ROWs.

As part of the Highway widening project, acquisition of approximately (≈) 7.2 acres of additional land for the ROW was completed and the final subdivision approval was received on February 9, 2004 from the County of Hawaii. The DOT acquired a portion

of TMK: (3) 7-4-008:002 that lies within the Conservation District from the Liliokalani Trust as recorded in the Bureau of Conveyances on March 9, 2004 for addition to the ROW (**Exhibit 2 & 3**). However, a Conservation District Use Application (CDUA) was not filed for the subdivision and consolidation of Conservation District land.

#### **DESCRIPTION OF AREA/CURRENT USE:**

The ≈ 218.5 acres subject property is located on the west coast of the island of Hawaii in Keahuolu ahupua'a, North Kona and lies within the Urban, Agricultural and Conservation State Land Use Districts. The General subzone Conservation District within the subject parcel is the area adjacent and makai of the Queen Ka'ahumanu Highway in the northern portion of the parcel and extends from Kaiwi Point to Pawai Bay along the shoreline (**Exhibit 4 & 5**).

The Queen Ka'ahumanu Highway is a two-lane State highway that extends along the North Kona and South Kohala coast from Kailua-Kona to Kawaihae. According to the applicant, the lands abutting the Queen Ka'ahumanu Highway are covered by a'a and pahoe-hoe lava and are sparsely populated and are not major habitats for plant or animal species. Scrub vegetation described as *summer deciduous scrub* is the primary type of flora in the vicinity of the subject area.

Avifauna found in the region include the native black-crowned night heron, the migratory Pacific Golden Plover, the wandering tattler and the ruddy turnstone are along with common exotics such as the mejiro, myna, zebra dove and francolins. Mammals known to be present in the region of the highway include mice, feral goat, mongoose, feral donkey, cats and dogs. The native Hawaiian hoary bat is listed on the Federal and the State endangered species list and has been observed in the region.

#### **AFTER THE FACT AND PROPOSED USE**

The proposed use is to legalize the after the fact subdivision and consolidation of Conservation District land for the expansion of the Right of Way of the Queen Ka'ahumanu Highway. In addition, improvements consisting of clearing, grubbing and grading, excavation, embankment, landscaping, irrigation, and other improvements (drainage, basins, inlets, culverts, electrical lines, water lines, retaining walls, traffic signs, traffic control striping) to create two parallel twelve-foot wide traffic lanes on the makai side of the existing roadway are also proposed.

#### **SUMMARY OF COMMENTS**

The application was referred to the following agencies for their review and comment: the **State**: Department of Health, Office of Hawaiian Affairs, Office of Environmental Quality Control, Department of Land & Natural Resources Divisions of: Engineering, Hawaii District Land Office, Historic Preservation, Boating and Recreation, and State Parks; and the **County of Hawaii**: Department of Planning, Department of Public Works and Councilmember Pilago.

Comments were received and summarized from the following:

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

*Division of Boating and Recreation*

No Comments

*Engineering Division*

The project site, according to the flood Insurance Rate map (FIRM) is located in flood Zone X. The National Flood Insurance Program does not have any regulations for developments within Zone X.

*Applicant's Response*

Highways Division acknowledges the location in Flood Zone X.

OFFICE OF HAWAIIAN AFFAIRS (OHA)

OHA recommends that all ground altering activities be observed by a professional archaeologist. An Archaeological Monitoring Plan will need to be drafted to define the scope of the monitoring and lay out the mitigation standards for inadvertent discoveries. Our office also asks that native plants be incorporated into the landscaping plan. Should iwi or native Hawaiian cultural or traditional deposits be found during ground disturbance, work will cease, and the appropriate agencies will be contacted pursuant to applicable law.

*Applicants Response*

Highways Division will perform the requested Cultural Assessment. Highways Division is in the process of procuring onsite archaeological monitoring services during construction, and to provide of a brief pre-construction awareness level seminar to construction personnel, enabling them to recognize potential burial sites, cultural or traditional deposits, and to follow appropriate notification processes.

COUNTY OF HAWAII

Subdivision Approval may be required by the Planning Department to accommodate the proposed development.

*Applicant's Response*

The subdivision and consolidation of land were previously recognized in County of Hawaii SUB 7005-A through G.

**ANALYSIS**

Following review and acceptance for processing, the Applicant's Agent was notified, by letter dated May 10, 2006, that:

1. The proposed use is an identified use pursuant to P-6, PUBLIC PURPOSE uses, D-1, within the Conservation District, according to Section 13-5-22, Hawaii Administrative Rules (HAR); please be advised, however, that this finding does not constitute approval of the proposal.
2. Pursuant to Section 13-5-40(a), HAR, a public hearing will not be required; and
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, the Final Environmental Assessment (FEA) was published in OEQC's Bulletin on July 23, 1996, and the State of Hawaii, Department of Transportation, Highways Division was the approving agency.

Notice of CDUA HA-3298 was published in the May 23, 2006 issue of the Environmental Notice.

**CONSERVATION CRITERIA**

The following discussion evaluates the merits of the proposed land use by applying the criteria established in §13-5-30, HAR.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

The After the Fact subdivision and consolidation of land for the Queen Ka'ahumanu ROW expansion is a portion of the widening of the Queen Ka'ahumanu Highway. The Highway widening project improvements attempt to address the increased traffic demands and congestion resulting from resort and residential developments proposed for the region. Phase I will widen Queen Kaahumanu Highway from two lanes to four to accommodate increasing traffic in Kona. A 30-foot-wide median with breakaway trees will also be built along that stretch of highway to prevent deadly head-on collisions.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the General subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature. The After the Fact subdivision/consolidation and highway improvements do not conflict with this objective. The general areas use shall not change and the open space aspect of a'a and pahoe-hoe lava fields should not be affected.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

Staff believes the After the Fact use and highway improvements are consistent with Chapter 205A, HRS.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

The After the Fact subdivision/consolidation and proposed improvements do not change the existing use of the subject area. Staff believes there shall be no substantial adverse impact to existing natural resources within the area.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion that the after the fact and proposed land use is appropriate to the physical conditions and capabilities of the area.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff is of the opinion that the natural beauty and open space characteristics of the area will be preserved.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The After the Fact subdivision and consolidation and highway improvements will increase the intensity of land use within the Conservation District for the public purpose of Highway Right of Way expansion.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

Staff is of the opinion that the proposed subdivision will not be materially detrimental to the public health, safety and welfare.

## **DISCUSSION**

The proposed use is to legalize the after the fact subdivision and consolidation of Conservation District land for the expansion of the Right of Way of the Queen Ka'ahumanu Highway. An existing use has already been established and no additional changes in land uses are proposed at this time.

Typical highway improvements consisting of clearing, grubbing and grading, excavation, embankment, landscaping, irrigation, and other improvements (drainage, basins, inlets, culverts, electrical lines, water lines, retaining walls, traffic signs, traffic control striping) to create two parallel twelve-foot wide traffic lanes on the makai side of the existing roadway are proposed within this addition to the Right of Way.

## **RECOMMENDATION**

Based on the preceding analysis, Staff recommends that the Board of Land and Natural Resources APPROVE this After the Fact subdivision and consolidation of 7.2 acres of Conservation District land for the expansion of the Right of Way of the Queen Ka'ahumanu Highway and highway improvements located adjacent & makai of Queen Ka'ahumanu Highway, Keahuolu, North Kona, Island of Hawaii, former portion of TMK:(3) 7-4-008:002 subject to the following conditions:

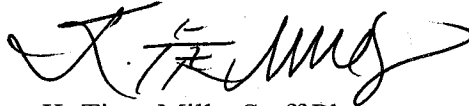
- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant shall comply with all applicable Department of Health administrative rules;
- 3) All mitigation measures set forth in the application materials, and in the final environmental assessment for this project are hereby incorporated as conditions of the permit;
- 4) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 5) The applicant acknowledges that this approval shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the

immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;

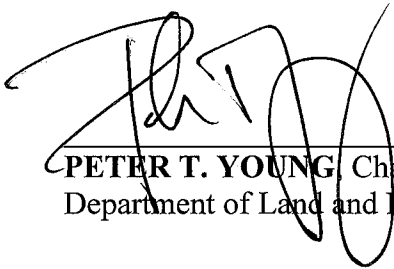
- 6) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 7) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR) Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control; if applicable"
- 8) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
- 9) Any work done or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within three (3) years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
- 10) All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
- 11) When provided or required, portable water supply and sanitation facilities shall have the approval of the Department of Health and the Board of Water Supply;
- 12) Provisions for access, parking, drainage, fire protection, safety, signs, lighting, and changes on the landscape shall be provided;
- 13) Obstruction of public roads, trails, and pathways shall be minimized. If obstruction is unavoidable, the applicant shall provide roads, trails, or pathways acceptable to the department;
- 14) During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
- 15) Other terms and conditions as may be prescribed by the Chairperson; and

- 16) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,

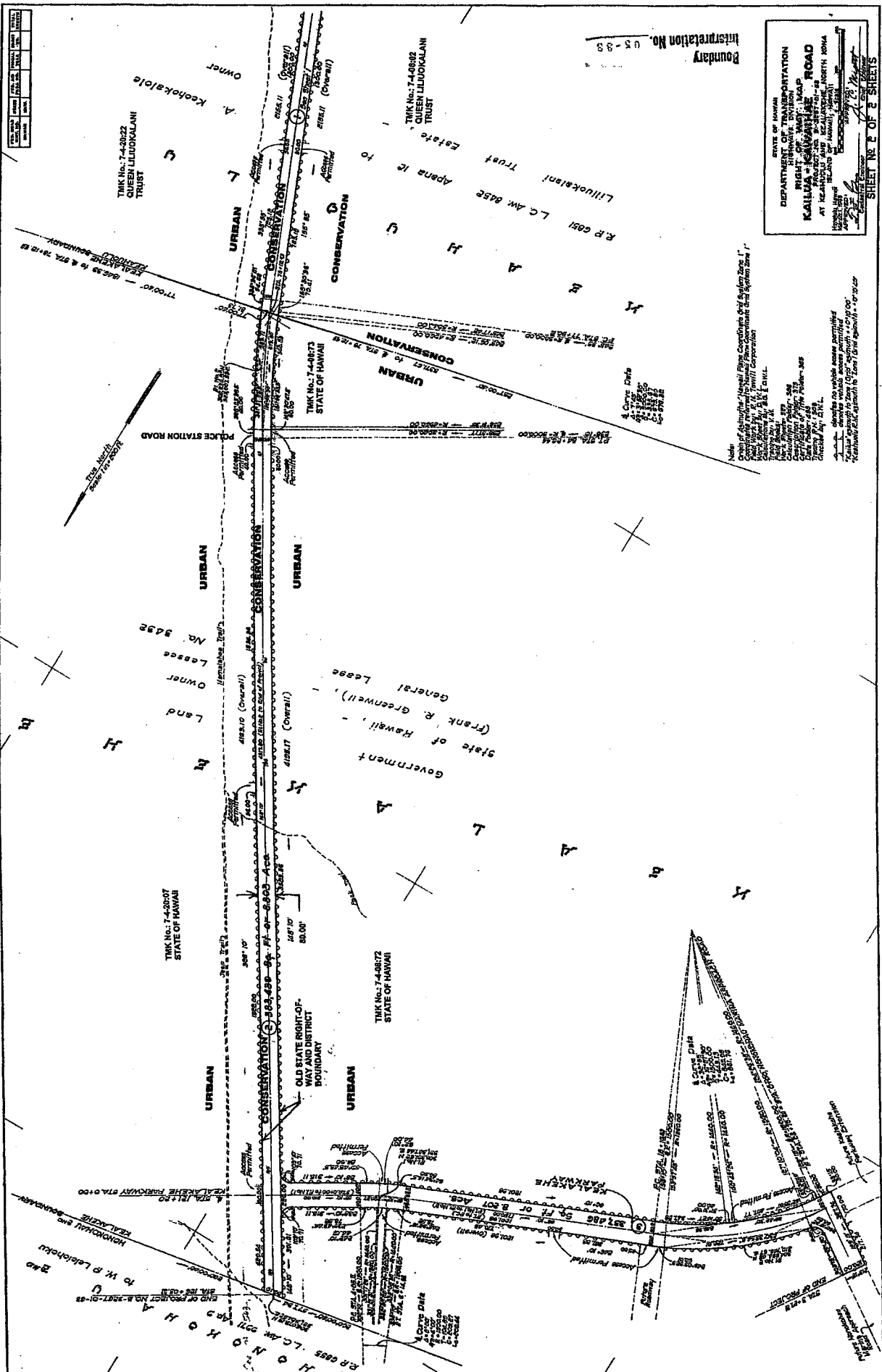


K. Tiger Mills, Staff Planner  
Office of Conservation and Coastal Lands



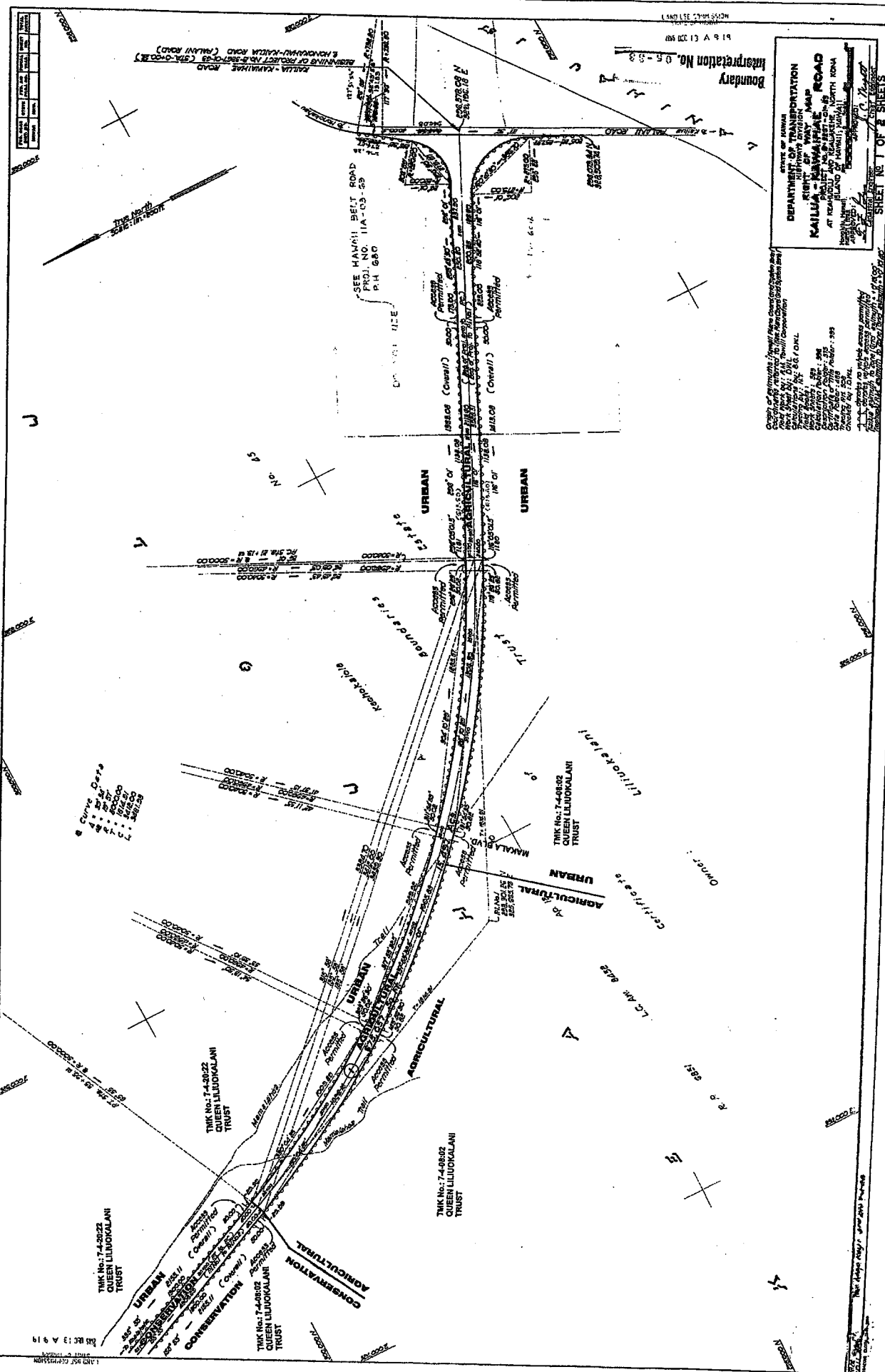
**PETER T. YOUNG**, Chairperson  
Department of Land and Natural Resources





# EXHIBIT

|           |               |
|-----------|---------------|
| NAME      | WAMM BY       |
| NOTE BOOK | THAMES BY     |
|           | QUANTITIES BY |
|           | CHAMBER BY    |



DEPARTMENT OF TRANSPORTATION  
RIGHT-OF-WAY MAP  
KAILUA-KUANINE ROAD  
AT KAILUA-KUANINE, NORTH HONOLULU  
HAWAII  
SHEET NO. 1 OF 2 SHEETS

Scale of Map: 1 inch = 100 feet  
Horizontal Scale: 1 inch = 100 feet  
Vertical Scale: 1 inch = 10 feet  
Projection: UTM  
Datum: WGS 84  
Zone: 18N  
Units: Feet  
Tolerance: 0.01 feet  
Accuracy: 0.01 feet  
Date: 10/1/2010  
Author: [Name]  
Editor: [Name]  
Reviewer: [Name]  
Approver: [Name]

Harry Kim  
Mayor



DEPT OF TRANSPORTATION

2004 FEB 19 P 1:36

Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

County of Hawaii  
HIGHWAYS DIVISION  
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

February 9, 2004

|                   |               |         |          |            |   |
|-------------------|---------------|---------|----------|------------|---|
| Post-it® Fax Note | 7671          | Date    | 3/8/06   | # of pages | 2 |
| To                | Neil Fulumoto | From    | J. Toy   |            |   |
| Co./Dept.         |               | Co.     |          |            |   |
| Phone #           | 536-4495      | Phone # | 692-7334 |            |   |
| Fax #             | 524-4466      | Fax #   |          |            |   |

Rodney K. Haraga  
Director of Transportation  
State of Hawaii Department of Transportation  
869 Punchbowl Street  
Honolulu, HI 96813-5097

Dear Mr. Haraga:

REVISED FINAL PLAT MAPS (SUB 7005-A to D)  
FINAL PLAT MAPS (SUB 7005-F & G)  
SUBDIVIDER: STATE-DOT/HIGHWAYS DIVISION  
RIGHT-OF-WAY BRANCH  
Queen Kaahumanu Highway Widening  
Kailua to Keahole, FAP NO. NH-019-1(19) Island of Hawaii

DISTRIB.

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| <input checked="" type="checkbox"/> CD | <input type="checkbox"/> KS            |
| <input type="checkbox"/> DA            | <input type="checkbox"/> MB            |
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| <input type="checkbox"/> DL            | <input type="checkbox"/> MT            |
| <input type="checkbox"/> DOL           | <input checked="" type="checkbox"/> NF |
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| <input type="checkbox"/> GQ            | <input type="checkbox"/> SW            |
| <input type="checkbox"/> JS            | <input type="checkbox"/> TG            |
| <input type="checkbox"/> JU            | <input type="checkbox"/> WS            |

✓0445.6

This is to acknowledge receipt of four (4) sets of twelve (12) copies each of revised final plat maps (Sheets 2, 3, 4 & 5) dated July 17, 2002; and also, two (2) sets of twelve (12) copies each of final plat maps showing Parcel 10(Rev. 1) and its Remainder, and Parcel 13 and its Remainder for the referenced subdivision application.

Please be advised that we have certified the revised final plat maps and final plat maps of which six (6) sets of four (4) copies each are enclosed. One (1) set of the four (4) revised final plat maps and two (2) final plat maps have been circulated to the listed officers for their files.

EXHIBIT 2

ctj  
DS 1/2/06  
JT 2/20

Rodney K. Haraga  
Director of Transportation  
State of Hawaii Department of Transportation  
Page 2  
February 9, 2004

Should you have any questions, please feel free to contact Ed Cheplic of this department.

Sincerely,

  
CHRISTOPHER J. YUEN  
Planning Director

ETC:lnm

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Encs. - 4 Sets, 4 Copies Each Certified Rev. FPM Sheet 2 (SUB 7005-A-Revised(1))

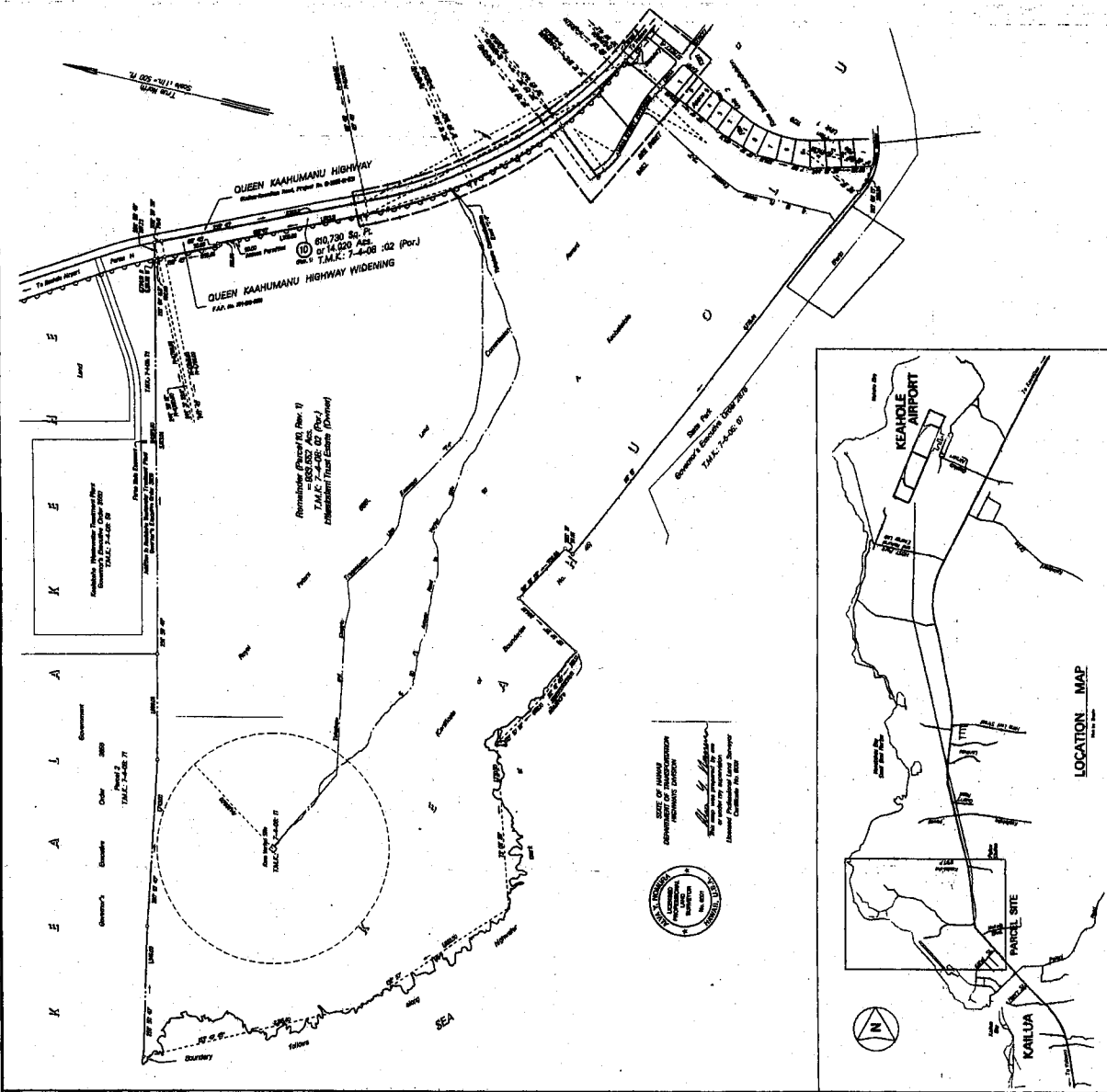
Sheet 3 (SUB 7005-B-Revised(1))

Sheet 4 (SUB 7005-C-Revised)

Sheet 5 (SUB 7005-D-Revised)

2 Sets, 4 Copies Each FPM (SUB 7005-F & SUB 7005-G)

xc: Manager, DWS w/1 Set Certified Rev. FPM & FPM  
Director, DPW w/1 Set Certified Rev. FPM & FPM  
District Environmental Health Program Chief, DOH w/1 Set Certified Rev. FPM & FPM  
District Engineer, DOT w/1 Set Certified Rev. FPM & FPM  
PLNG-KONA w/1 Set Certified Rev. FPM & FPM  
DPW-ENG-KONA  
Tax Maps and Records Supervisor w/1 Set Certified Rev. FPM & FPM  
Real Property Tax Division-Kona w/1 Set Certified Rev. FPM & FPM  
SUB 2714, 3244, 3162, 3339, 4573, 5729, 5802, 6146, 6364, 7326;  
USE 1, 170; SLU 146, 453, 786, 101, 153, 312;  
REZ 101, 463, 613, 636; SMA 17, 112, 150, 201, 289, 315;  
SMA 34, 266, 280; SPP 348, 424  
TMK Files 7-4-15:15, 18, 20, 21, 22



SUBDIVISION OF T.M.K.: (317-4-08-02 INTO PARCEL 10(Rev. 1) AND REMAINDER(Parcel 10, Rev. 1)  
BEING A PORTION OF ROYAL PATENT 6851, LAND CONVEYANCE AWARD 8452,

APANA 12 TO A. KEOKALOLE  
(CERTIFICATE OF BOUNDARIES NO. 45)

AT KEAHUOLU, NORTH KONA, ISLAND OF HAWAII, HAWAII

7005F

NOTE:  
1. All of the above "As Shown" North Meridian is  
2. Coordinates referred to "Hawaii North Meridian"  
3. All of the above "As Shown" North Meridian is  
4. All of the above "As Shown" North Meridian is  
5. All of the above "As Shown" North Meridian is

Scale: 1 in. = 500 ft.  
November 12, 2003  
T.M.K. 7-4-08-02 (Por.)

Harry Kim  
Mayor



RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LAND

Christopher J. Yuen  
Director

Brad Kurokawa, ASLA

LEED@AP

Deputy Director

County of Hawaii 2006 JUN -5 A 7 51

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • FAX (808) 961-8742

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

May 15, 2006

Mr. Neal Fukumoto, P.E.  
Wesley R. Segawa & Associates, Inc.  
736 South St., Suite 203  
Honolulu, HI 96813-5127

Dear Mr. Fukumoto:

**Subject: Conservation District Use Application**  
**State of Hawai'i, Department of Transportation**  
**Highways Division for Queen Ka'ahumanu Highway Widening, Phase I**  
**Henry Street to Kealahou Parkway, North Kona District, Hawai'i**  
**TMKs: (3)7-4-020:07, 22, and (3) 7-4-08:02, 72, and 73**

This letter acknowledges receipt of your fax of March 16, 2006 and letter dated April 6, 2006, both of which note the final approval by the Planning Department of SUBs 7005-A-D (Revised) and SUBs 7005-F and 7005-G.

These approved subdivisions cover the expansion of Queen Ka'ahumanu Highway along the following TMKs:

|                        |  |
|------------------------|--|
| SUB 7005-A Revised -   | From TMK: 7-5-004:043 (Fronting a portion of Wal-Mart Stores, Inc. but not extending all the way to Henry Street) to TMK: 7-4-015:016. Subdivision extends along both sides of Queen K. Hwy. |
| SUB 7005-B Revised -   | From TMK: 7-4-020:010 (portion) to 7-4-020:022 (portion). Sub. extends on both sides of Queen K. Hwy.  |
| → SUB 7005-C Revised - | Portion of TMK: 7-4-008:002 (Sub. extends on both sides of the Queen K. Hwy. past the boundary of Keahuolu and Kealahou)   |

**EXHIBIT 2**

|                               |             |      |         |              |   |
|-------------------------------|-------------|------|---------|--------------|---|
| Post-it <sup>®</sup> Fax Note | 7671        | Date | 6/5/06  | # of pages   | 2 |
| To                            | Tiger Mills |      | From    | Debbie Chang |   |
| Co./Dept.                     |             |      | Co.     |              |   |
| Phone #                       |             |      | Phone # |              |   |
| Fax #                         |             |      | Fax #   |              |   |

Mr. Neal Fukumoto, P.E.

Page 2

May 15, 2006

SUB 7005-D Revised - From TMK: 7-4-008:002 (remainder) to 7-4-008:072 (portion).  
Subdivision extends on both sides of the Queen K. Hwy. to  
Kealahou Parkway Phase I.

SUB 7005-F - From TMK: 7-4-008:069 to 7-4-008:002 (portion). Sub. on makai  
side of Queen K. Hwy. only.

SUB 7005-G TMK: 7-4-020:022. Sub. on mauka side of Queen K. Hwy. only.

Should you have questions or wish to discuss this further, please contact Deborah Chang of my  
staff at 961-8288, Ext. 254.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

DLC:cd

P:\public\WFWIN60\Deborah\Comments\QKWideningDOT.doc

We hereby certify that this is a true copy of the original  
filed as Land Court Document No. \_\_\_\_\_  
and / or recorded in the Bureau of Conveyances as  
Document No. 2004-048458 on  
March 9, 2004 at 8:01 o'clock A.M.

TITLE GUARANTY OF HAWAII, INCORPORATED



LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL ( ) PICK-UP ( )

TO: STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
ABSTRACTING SECTION

Tax Map Key No. (3) 7-4-15-15 (por.), -20 (por.), -21 (por.) Total Pages: 38  
(3) 7-4-15-18 (por.)  
(3) 7-4-8-2 (por.)  
(3) 7-4-20-09 (por.), -10 (por.), -15 (por.), -22 (por.)

### TRUSTEES' DEED

GRANTOR: DAVID M. PETERS  
THOMAS K. KAULUKUKUI, JR.  
PATRICK K.S.L. YIM  
Trustees of the Liliuokalani Trust  
Under Deed of Trust made by Liliuokalani, dated  
December 2, 1909, recorded in Liber 319, Pages 447-459

GRANTEE: STATE OF HAWAII  
By Its Department of Transportation  
869 Punchbowl Street  
Honolulu, Hawaii 96813



**KNOW BY ALL MEN THESE PRESENTS:**

**THAT DAVID M. PETERS, THOMAS K. KAULUKUKUI, JR., and PATRICK K.S.L. YIM, TRUSTEES OF THE LILIUOKALANI TRUST**, Under Deed of Trust made by Liliuokalani, dated December 2, 1909, recorded in Liber 319, Pages 447-459, which has its principal place of business and post office address at 733 Bishop Street, Suite 1800, Honolulu, Hawaii 96813 ("GRANTOR"), in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration paid by the **STATE OF HAWAII**, by its Department of Transportation, which has its principal place of business and post office address at 869 Punchbowl Street, Honolulu, Hawaii 96813 ("GRANTEE"), the receipt and sufficiency of which are hereby acknowledged, does hereby grant, bargain, sell, and convey unto GRANTEE, its successors and assigns, forever: All of those certain lands and premises designated as PARCELS 3 (Rev. 1), 5 (Rev. 1), 6 (Rev. 1), 7 (Rev. 1), 10 (Rev. 1), 11, 12 and 13, together with abutter's rights of vehicle access, situated at Keahuolu, District of North Kona, Island and County of Hawaii, State of Hawaii, as shown on the Right-of-Way Map of the Queen Kaahumanu Highway Widening, Kailua to Keahole, Federal Aid Project No. NH-019-1(19), filed in the Highways Division, Department of Transportation, State of Hawaii ("Property"), and more particularly described in Exhibits "A-1", "A-2", "A-3", "A-4", "A-5", "A-6", "A-7", and "A-8" attached hereto and incorporated herein by reference.

AND the reversions, remainders, rents, issues and profits thereof, and all of the estate, rights, title and interests of GRANTOR, both at law and in equity, therein and thereto.

**SUBJECT, HOWEVER**, to the covenants, agreements, easements, obligations, conditions, exceptions, liens, reservations and provisions and other matters, including specifically the rights reserved unto GRANTOR, and its successors and assigns, and the easements and other rights and interests created by and in favor of others, as more particularly described in Exhibits "B-1", "B-2", "B-3", "B-4", "B-5", "B-6", "B-7", and "B-8" attached hereto and incorporated herein by reference.

**TO HAVE AND TO HOLD** the same, together with all improvements, rights, tenements, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto GRANTEE, its successors and assigns, forever.

AND GRANTOR, for itself, its successors and assigns, does hereby covenant with GRANTEE, its successors and assigns, that GRANTOR is lawfully seized in fee simple of the Property, described in Exhibits "A-1", "A-2", "A-3", "A-4", "A-5", "A-6", "A-7", and "A-8" attached hereto, and has good right to sell and convey the same as aforesaid; that the same are free and clear of all liens and encumbrances made or suffered by GRANTOR other than those hereinabove or hereinafter mentioned and other than any and all recorded and unrecorded leases, licenses and other tenancies affecting the Property; that GRANTOR shall WARRANT AND DEFEND the same unto GRANTEE, its successors and assigns, forever, against the claims and demands of all persons claiming by, through or under GRANTOR, except as mentioned hereinabove or hereinafter.

**THE PARTIES HERETO AGREE that:**

1. GRANTOR makes no statements or promises about the condition of said Property or any improvements on or under said Property, and GRANTEE expressly acknowledges and agrees that the Property is being conveyed to GRANTEE in an "AS IS, WHERE IS AND WITH ALL FAULTS" condition and that GRANTOR has not made, and does not make, any warranties or representations of any kind, expressed or implied, concerning the state, use or condition of the Property, including, without limitation (collectively, "Property Status"): the condition of improvements, the soil, any subsidence, faulting or the water table level; the existence or nonexistence of geological or environmental conditions; the presence of hazardous or toxic materials, wastes, substances or other environmental matters; historic and archaeological matters, including, but not limited to, gathering rights and burial sites; risk of tsunami, flood hazard and drainage; the fitness of the Property for any particular use or purpose; compliance with applicable governmental laws, rules, regulations and limitations, including, without limitation, building, land use, subdivision, setback, or other applicable laws; and the zoning, staking, survey, use, location, development or suitability of the Property. No patent or latent condition affecting the Property in any way, whether now known or discoverable or hereafter discovered, shall give rise to any right, damages, rescission or otherwise against GRANTOR. GRANTEE ACCEPTS ALL RISKS OF ANY DEFECTS OR DEFICIENCIES IN THE PROPERTY, WHETHER KNOWN OR UNKNOWN, AND GRANTEE ACKNOWLEDGES THAT GRANTOR MAKES NO EXPRESS WARRANTIES OF ANY KIND AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF ANY NATURE WHATSOEVER PERTAINING TO THE PROPERTY. It shall be incumbent on GRANTEE to make such investigations as GRANTEE shall deem necessary or appropriate as to the condition of the Property Status. Acceptance of this instrument by GRANTEE shall constitute full and complete acceptance by GRANTEE of the Property in its existing "AS IS, WHERE IS AND WITH ALL FAULTS" condition.

2. The terms "Grantor" and "Grantee" wherever herein used shall be held to mean and include GRANTOR, its successors and assigns, and GRANTEE, its successors and assigns, and this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their said respective successors and assigns.

3. The terms "Grantor" and "Grantee" wherever herein used or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, corporations or limited liability companies, and their respective successors, heirs, personal representatives and assigns, according to the context thereof. All obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention shall be clearly expressed elsewhere herein.

4. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same instrument, binding all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate, unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties hereto have executed these presents this  
9th day of March, 2004.

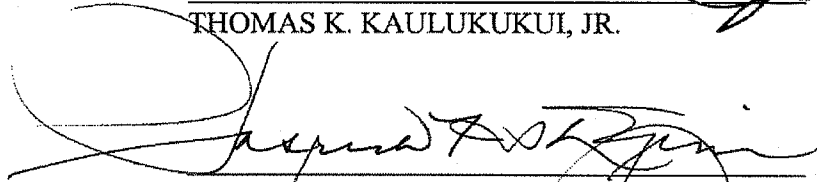
TRUSTEES OF THE LILIUOKALANI TRUST,  
Under Deed of Trust made by Liliuokalani, dated  
December 2, 1909, recorded in Liber 319,  
Pages 447-459



DAVID M. PETERS



THOMAS K. KAULUKUKUI, JR.



PATRICK K.S.L. YIM

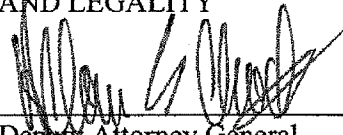
"GRANTOR"

DEPARTMENT OF TRANSPORTATION OF  
THE STATE OF HAWAII

By   
Its DIRECTOR OF TRANSPORTATION

"GRANTEE"

APPROVED AS TO FORM  
AND LEGALITY

  
Deputy Attorney General  
State of Hawaii

Date JAN 16 2004

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

SS:

On this 24th day of February, 2004, before me appeared DAVID M. PETERS, THOMAS K. KAULUKUKUI, JR., and PATRICK K.S.L. YIM, to me personally known, who, being by me duly sworn, did say that they are the Trustees of the Liliuokalani Trust, Under Deed of Trust made by Liliuokalani, dated December 2, 1909, recorded in Liber 319, Pages 447-459, and who executed the foregoing instrument in behalf of said Trust as Trustees, authorized under the terms of said Trust, and acknowledged that they executed the same as their free act and deed as Trustees of said Trust.

*Laurietta N. Burkett*

Notary Public, State of Hawaii

Type or Print Name: LAURIETTA N. BURKETT

My commission expires: 8/18/06

L.S.

QUEEN KAAHUMANU HIGHWAY WIDENING  
Kailua to Keahole  
Federal Aid Project No. NH-019-1(19)

PARCEL 10 (REVISION 1)

Being a portion of Royal Patent 6851, Land Commission Award 8452, Apana 12 to A. Keohokalole (Certificate of Boundaries No. 45)

Land situated at Keahuolu, North Kona, Island of Hawaii,  
Hawaii

Beginning at the Northwest corner of this piece of land, on the Southwest side of Queen Kaahumanu Highway Widening, Kailua to Keahole, Federal Aid Project No. NH-019-1(19) and on the Keahuolu-Kealakehe Boundary, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Kailua (North Meridian)" being 6,734.91 feet North and 5,211.58 feet West, thence running by azimuths measured clockwise from true South:

1. 256° 50' 40" 167.73 feet along the Keahuolu-Kealakehe Boundary, along the Government Land of Kealakehe;
2. Thence along the Southwest side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Project No. B-3267-01-63), on a curve to the right with a radius of 4,960.00 feet, the chord azimuth and distance being 335° 20' 36" 70.41 feet;
3. 335° 45' 00" 2,155.11 feet along the Southwest side of Queen Kaahumanu Highway (Kailua-Kawaihae Road, Project No. B-3267-01-63);

QUEEN KAAHUMANU HIGHWAY WIDENING  
Project No. NH-019-1(19)  
Parcel 10 (Revision 1)

4. Thence along same on a curve to the left with a radius of 5,040.00 feet, the chord azimuth and distance being  $318^{\circ} 06' 50.6''$  3,053.92 feet;
5.  $25^{\circ} 41' 00''$  5.66 feet along Lot 1-A (Revised) of R.P. 6851, L.C.Aw. 8452, Apana 12 to A. Keohokalole;
6.  $118^{\circ} 00' 00''$  124.19 feet along the Southwest side of Queen Kaahumanu Highway Widening, Project No. NH-019-1(19), along Lot 2 of Makalapua Business Center Subdivision, Increment 1;
7. Thence along same on a curve to the right with a radius of 4,605.00 feet, the chord azimuth and distance being  $119^{\circ} 38' 35.2''$  264.09 feet;
8.  $31^{\circ} 17' 10.4''$  15.00 feet along the Southwest side of Queen Kaahumanu Highway Widening, Project No. NH-019-1(19), along Lot 2 of Makalapua Business Center Subdivision, Increment 1;
9. Thence along the Southwest side of Queen Kaahumanu Highway Widening, Project No. NH-019-1(19), along Lots 2 and 1 of Makalapua Business Center Subdivision, Increment 1 on a curve to the right with a radius of 4,620.00 feet, the chord azimuth and distance being  $124^{\circ} 40' 27.4''$  546.07 feet;

QUEEN KAAHUMANU HIGHWAY WIDENING  
Project No. NH-019-1(19)  
Parcel 10 (Revision 1)

10. Thence along the Southwest side of Queen Kaahumanu Highway Widening, Project No. NH-019-1(19), along the remainder of R.P. 6851, L.C.Aw. 8452, Apana 12 to A. Keohokalole on a curve to the right with a radius of 4,620.00 feet, the chord azimuth and distance being 128° 14' 11.7" 28.10 feet;
11. Thence along same on a curve to the right with a radius of 4,620.00 feet, the chord azimuth and distance being 129° 09' 20.5" 120.12 feet;
12. Thence along same on a curve to the right with a radius of 4,620.00 feet, the chord azimuth and distance being 135° 39' 15.1" 926.32 feet;
13. Thence along same on a curve to the right with a radius of 4,620.00 feet, the chord azimuth and distance being 141° 43' 04.4" 50.00 feet;
14. Thence along same on a curve to the right with a radius of 4,620.00 feet, the chord azimuth and distance being 148° 53' 20.3" 1,103.82 feet;
15. 155° 45' 00"      26.55 feet along the Southwest side of Queen Kaahumanu Highway Widening, Project No. NH-019-1(19), along the remainder of R.P. 6851, L.C.Aw. 8452, Apana 12 to A. Keohokalole;
16. 155° 45' 00"      50.00 feet along same;



QUEEN KAAHUMANU HIGHWAY WIDENING  
Project No. NH-019-1(19)  
Parcel 10 (Revision 1)

17. 155° 45' 00" 1,300.00 feet along same;
18. 155° 45' 00" 50.00 feet along same;
19. 155° 45' 00" 166.66 feet along same;
20. 65° 45' 00" 30.00 feet along same;
21. 155° 45' 00" 558.46 feet along same;
22. Thence along same on a curve to the left with a radius of 4,796.00 feet, the chord azimuth and distance being 155° 08' 11.8" 102.69 feet to the point of beginning and containing an area of 610,730 square feet or 14.020 acres.

Together with any and all abutter's rights of vehicle access, appurtenant to the remainder of the land of which Parcel 10 (Revision 1) is a part, into and from Queen Kaahumanu Highway Widening, Kailua to Keahole, Federal Aid Project No. NH-019-1(19), over and across Courses 10, 12, 14, 15, 17 and 19 to 22 inclusive of the above described Parcel 10 (Revision 1).

Also, together with any and all abutter's rights of vehicle access, appurtenant to Lots 1 and 2 of Makalapua Business Center Subdivision, Increment 1, into and from Queen Kaahumanu Highway Widening, Kailua to Keahole, Federal Aid Project No. NH-019-1(19), over and across Courses 6 to 9 inclusive of the above described Parcel 10 (Revision 1).

QUEEN KAAHUMANU HIGHWAY WIDENING  
Project No. NH-019-1(19)  
Parcel 10 (Revision 1)

Also, together with any and all abutter's rights of vehicle access, appurtenant to Lot 2 of Makalapua Business Center Subdivision, Increment 1, into and from Queen Kaahumanu Highway Widening, Kailua to Keahole, Federal Aid Project No. NH-019-1(19), over and across the following described right-of-way boundary:

Beginning at the Northeast end of this right-of-way boundary, at the end of Course 5 of the above described Parcel 10 (Revision 1), thence running by azimuth measured clockwise from true South:

1.     25° 41' 00"             62.38 feet along the Southwest side of Queen Kaahumanu Highway Widening, Project No. NH-019-1(19), along Lot 2 of Makalapua Business Center Subdivision, Increment 1 to the Southwest end of this right-of-way boundary and having a length of 62.38 feet.

STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
Highways Division

Honolulu, Hawaii  
July 30, 2002

By Conquancio P. Pajang  
Assoc. Cadastral Engineer

Tax Map Key: 7-4-08:02 (Portion)

(Calc. Folder 574-A, Pages 22R and 23R)

Description Checked

DK

Cadastral Engineer

Date 4/24/07

Exhibit "A-5"  
(Page 5 of 5)

LLC W

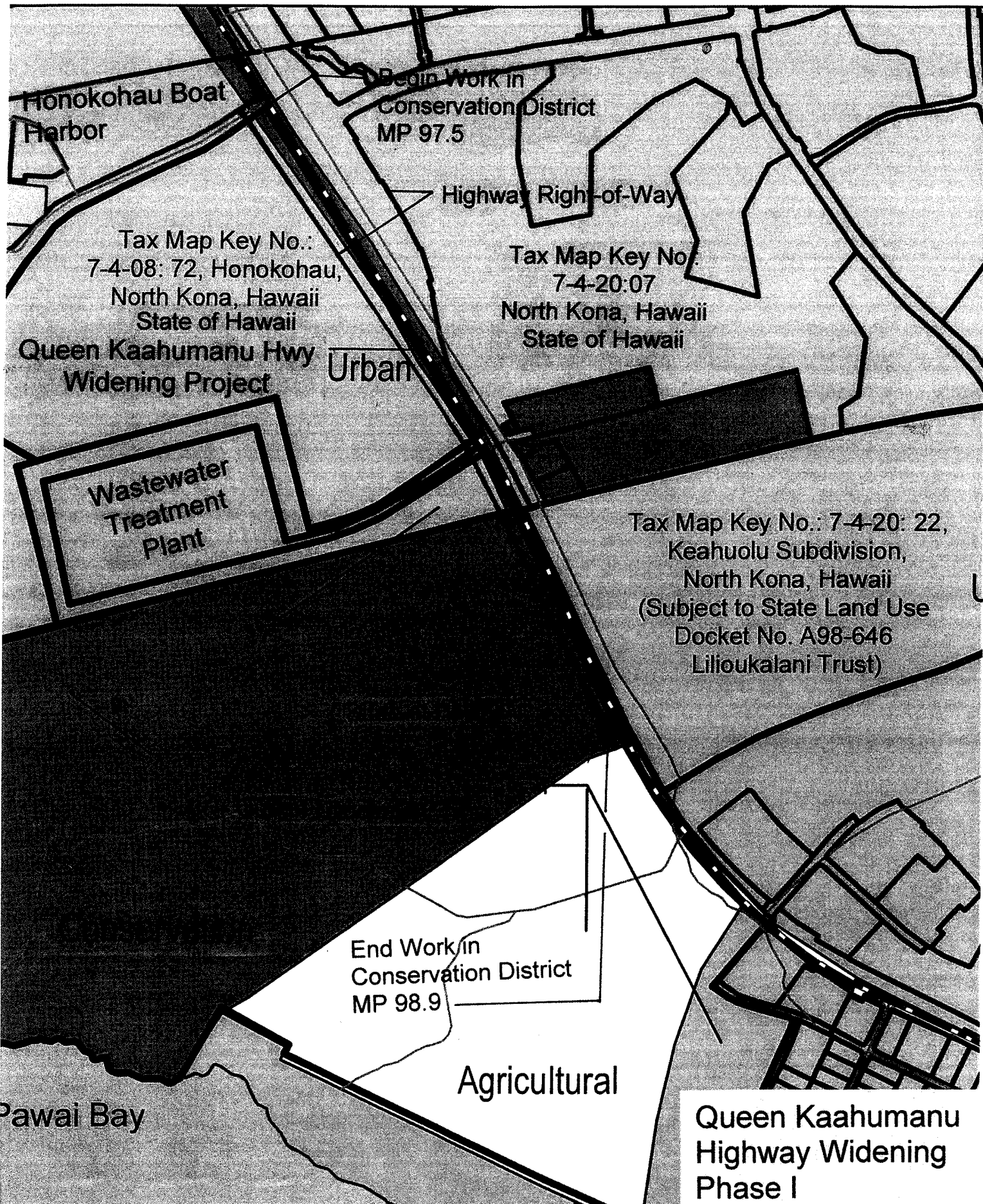


EXHIBIT 4

